



## **X Annual Caribbean Court of Justice International Law Moot (2018)**

**The Republic of Trinbago**

v.

**The State of Brimshire and Wellness Caribbean Coalition**

On 1 November 2017, the CARICOM State of Brimshire in its Finance Act implemented a 20% tax on Sugar Sweetened Beverages (the 'SSB tax') and a limited ban on advertisement of such beverages (the 'Advertisement Ban'). Imposition of the SSB tax was announced during the presentation of the Brimshire 2017 National Budget by the Minister of Finance, Mr Sprinkler, who stated that the measure would yield significant revenues to the Government. In his contribution to the Budget debate, the Minister of Health Dr. Joyce praised the measure as:

“... a necessary first step in the fight against obesity and Non-Communicable Diseases generally. The Global Health Review has found that increased sugar intake corresponds with elevated rates of obesity, Type 2 diabetes and certain forms of cancer. The Caribbean is amongst the most seriously affected regions of the world and if we do not act now, the sheer costs of providing medical interventions will bankrupt this country.”

The SSB tax was imposed on “...carbonated soft drinks, juice drinks, fruit juices, sports drinks, and others which fall under tariff headings 20.09 and 22.02 on the import side, and like products produced within Brimshire, that contain added high calorie sweeteners...” At the insistence of Dr Joyce, the Bill was amended to include a provision which banned advertisement of the taxed products on radio and television stations during the hours of 8am to 8pm when, according to the Minister, “the nation’s children are likely to be exposed to the dastardly pushing of these dangerous beverages.”

Eighty per cent (80%) of the products covered by the SSB Tax and Advertisement law are imported from Trinbago.

On 1 December 2017, Trinbago filed an Originating Application in the Caribbean Court of Justice ('CCJ'), seeking a declaration that the SSB tax and the Advertisement Ban restrict regional trade

and violate the freedom of movement of goods and services within the CSME in direct violation of Article 79 of the Revised Treaty of Chaguaramas (the 'Treaty'). Moreover, Trinbargo submits, the Advertisement Ban is a breach of the fundamental right to freedom of expression which is a generally accepted principle of law in all Member States of CARICOM.

In its Defence, the State of Brimshire argues that the CCJ should grant an order dismissing the application because its law is fully justified under Article 226 (1) (b) as a measure, "to protect human, animal or plant life or health".

On 10 January 2018, Wellness Caribbean Coalition ('WCC'), a non-governmental organization based in Brimshire, sought and obtained leave from the CCJ to intervene in the proceedings to support the order sought by Brimshire, but with no right to participate in the hearing. WCC filed a statement stressing the importance of the health issue, submitting that its members have a fundamental right to health, a right, it argues, that is recognized in international law and in the Treaty.

Trinbargo responds by submitting that the SSB Tax and Advertisement Ban were not proportionate to any perceived dangers posed by its products since lesser Treaty-inconsistent measures could have been adopted such as labelling requirements. It denies that there is any fundamental right to health in the Treaty or in Community law that could accrue to WCC in particular or Community nationals in general.

Senior Counsel of Trinbargo will argue that the SSB Tax and Advertisement Ban violate Article 79 and cannot be justified by Article 226 (1) (b), and also that the law breaches the fundamental right to freedom of expression. Junior Counsel will argue that there is no fundamental right to health in the Treaty or Community law.

Senior Counsel of Brimshire will argue that the SSB Tax and Advertisement Ban is justified by Article 226 (1) (b) of the Revised Treaty, the fundamental right to freedom of expression not being part of Community law, whilst Junior Counsel will argue that there is a fundamental right to health enshrined in the Treaty or Community law.